

WESTERN
IN THE UNITED STATES DISTRICT COURT FOR THE ~~EASTERN~~ DISTRICT OF VIRGINIA
CLERK'S OFFICE U.S. DIST. COURT
AT LYNCHBURG, VA
FILED
JUL 27 2009
JOHN P. CONNORAN, CLERK
BY: *[Signature]*
DEPUTY CLERK

LYNCHBURG DIVISION

HOLLY BRANHAM,

Plaintiff,

v.

CASE# 09007449 6:09CW00037

DOLGENCORP, INC, etc

HOLLY BRANHAM'S RESPONSE TO DEFENDANT MOTION TO DISMISS

Holly Branham's complaint sets forth that she fell and injured herself on liquid which the Defendants employees negligently failed to remove from the floor and failed to inform her of the dangerous liquid on the floor. The Defendant citation to BELL ATLANTIC v. TWOMBLY supports the Plaintiff " A claim has facial plausibility when the Plaintiff pleads factual content that allows the Court to draw reasonable inference that the Defendant is liable for the misconduct alleged. BELL ATLANTIC v. TWOMBLY 550 US.544 at 550 US. 556

Clearly Branham has plead factual content that allows the Court to draw reasonable inferences that the Defendant is liable for the misconduct alleged.

BRAMLET v. WILSON (1974 CA 8 Ark 495 F2d. 714; **WILLIAMS v. UNITED CREDIT PLAIN**
STORE MANAGEMENT, INC; (1976 CA 5 LA) 526 F2d. 713 **THOMAS v. GARLAND INC v. Saint**
LOUIS (1979, CA 8 MO) 596 F2d 784; **PEARMAN v. NORFOLK + W.R.Co** (1991 CA 7 ILL) 939 F2d.
521; **SMITH v. CASH STORE MANAGEMENT, INC;** (1999 CA 7 ILL) 195 F3d 325; **VALENTINE v.**
POWERS (1948 D.C. Neb) 85 F Supp. 732.; **STELLA v. KAISER** (1948 D.C. NY) 82 F Supp. 301.;

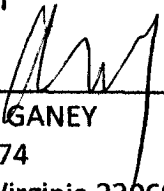
BOWLES v. SHIREY (1944 D.C. Neb. 60 F Supp. 301; **KARNO- SMITH Co. v. SCHOOL DISTRICT**
(1942 D.C. PA) 44 F Supp 860.; **BRANCH v. BIRMINGHAM** (1943 N.D. IOWA) 49 F. Supp. 229;
HESS v. FACTORS CORP. (1948 D.C. PA.) 80 F. Supp 727; **FEDORCHAK v. MONTGOMERY WARD**
(1955, D.C. PA) 18 FRD 1.

Certainly Virginia law supports Holly Branham. Rule 3:18 (b) of the Rules of the Virginia Supreme Court states "Allegation of Negligence. An allegation of negligence or contributory negligence is sufficient without specifying the particulars of the negligence." See **TANNER v. MOBIL OIL** 54 VA. Cir. 90 2000 VA Cir. Lexis 550 Fairfax 2000; **ELLIOT v. COOK** 60 VA. Cir 2002 VA. Cir Lexis 121 Loudon County 2002.

Branham moves the Court to deny the motion to dismiss.

Holly Branham

By Counsel



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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was sent by first class mail, postage prepaid this 25th day of July, 2009, to the Counsel of record. James G. Muncie TR. Kevin T. Streit Midkiff and Muncie + Ross P.C. 300 Arboretum Place Suite 420 Richmond Virginia 23236



Robert Ganey